WC 10-141

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Federal Communications Commission
Office of the Secretary

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus & Southern Ohio Electric Company for Authority to Amend and Increase Certain of its Rates and Charges for Electric Service, Amend Certain Terms and Conditions of Service and Revise its Depreciation Accrual Rates and Reserves.) Case No. 81-1058-EL-AIR

In the Matter of the Regulation of the Rates, Terms and Conditions of Public Utilities Having Pole Attachments Relating to 47 USC Section 224 Pursuant to the Ohio Revised Code Sections 4905.71 and 4905.72.) Case No. 82-654-EL-ATA

OPINION AND ORDER

The Commission, coming now to consider the above-entitled application filed pursuant to Section 4909.18, Revised Code, the exhibits filed therewith, the Staff Report of Investigation issued pursuant to Section 4909.19, Revised Code, and the testimony and exhibits introduced at public hearing; having appointed Attorney Examiners Rebecca S. Haney and Helen L. Liebman, pursuant to Section 4909.18, Revised Code, to conduct the public hearing and to certify the record directly to the Commission; and being fully advised of the facts and issues in these cases, hereby issues its Opinion and Order.

APPEARANCES

Messrs. Porter, Wright, Morris & Arthur, by Messrs. Samuel H. Porter, William J. Kelly, Jr., and Daniel R. Conway, 37 West Broad Street, Columbus, Ohio 43215, and Mr. James L. Reeves, 215 North Front Street, Columbus, Ohio 43215, on behalf of the Applicant, Columbus & Southern Ohio Electric Company.

Mr. William J. Brown, Attorney General of Ohio, by Messrs. James R. Bacha and Harris S. Leven, Assistant Attorneys General, 375 South High Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Mr. William A. Spratley, Consumers' Counsel, by Ms. Gretchen J. Hummel and Mr. Bruce J. Weston, Associate Consumers' Counsel, 137 East State Street, Columbus, Ohio 43215, on behalf of the residential consumers of the Columbus & Southern Ohio Electric Company.

Mr. Gregory S. Lashutka, City Attorney, by Mr. John C. Klein, Assistant City Attorney, 90 West Broad Street, Columbus, Ohio 43215, on behalf of the City of Columbus, Ohio.

Bell and Randazzo, Co., L.P.A., by Messrs. Langdon D. Bell, Samuel C. Randazzo and John W. Bentine, 21 East State Street, Columbus, Ohio 43215, on behalf of the Industrial Electric Consumers.

Messrs. Vorys, Sater, Seymour and Pease, by Mr. William S. Newcomb, Jr., 52 East Gay Street, Columbus, Ohio 43215, and Messrs. Hogan and Hartson, by Mr. Gardner Gillespie, of Counsel, on behalf of Ohio Cable Television Association.

Messrs. Vorys, Sater, Seymour & Pease, by Mr. Sheldon A. Taft, 52 East Gay Street, Columbus, Ohio 43216, on behalf of Buckeye Steel Castings, Division of Worthington Industries, Inc.

of public testimony. The taking of expert testimony began on June 28, 1982, and continued for 25 days.

Initial post-hearing briefs were filed by the parties on September 17 and September 24, 1982;* reply briefs were filed on October 1, 1982. Amicus briefs on the pole attachment issue were filed by the Ohio Telephone Association and Toledo Edison Company, pursuant to Attorney Examiner's Entry of July 23, 1982.

COMMISSION REVIEW AND DISCUSSION

By its application, filed pursuant to Section 4909.18, Revised Code, C&SOE requests authority to increase its rates and charges for electric service to all jurisdictional customers. The Company alleges that its current rates are unjust, unreasonable and insufficient to yield just compensation for the services rendered, and seeks approval of rates which would increase annual revenues by approximately $100,838,000, based on its analysis of test year operations. The Commission must evaluate the evidence presented at hearing to determine whether C&SOE's existing rates are inadequate. If the Company sustains its burden of proof, then the Commission must establish rates which will afford the Company the opportunity to earn a fair rate of return.

ALLOCATIONS

Because not all of the Company's electric sales are affected by this application, it is necessary to allocate property and accounts to insure that the rates ultimately authorized reflect the cost of providing jurisdictional electric service. Based on the results of its investigation, the Staff found the Company's allocation factors to be reasonable and appropriate for the purposes of this proceeding (Staff Ex. 1, p. 4). No party filed any objections to the Staff's conclusion in this area. Consistent with the Staff recommendation, the Commission finds the jurisdictional allocation factors proposed by the Company to be reasonable and proper.

RATE BASE

The Company and the Staff each provided testimony in support of its analysis of the elements of the rate base which should be approved in this proceeding. The following table compares the two initial estimates of the value of C&SOE's property used and useful in providing service as of the date certain of December 31, 1981. OCC generally concurred in the Staff's recommendations, and differed with the Staff only on the issues of the construction work in progress and working capital allowances. Subsequent adjustments and relevant objections will be discussed on an item-by-item basis below.

Jurisdictional Rate Base
(000's Omitted)

	Applicant[1]	Staff[2]
Plant in Service	$ 1,297,343[(3)]	$ 2,186,629
Less: Depreciation Reserve	336,685	332,594
Net Plant in Service	$ 960,656	$ 954,035
Plus: CWIP	206,046	190,974
Working Capital	82,814	47,122
Plant Held for Future Use	13,382	
Cancelled Projects	1,805	

* The first initial briefs (cited as Br. I) covered all issues but operating income, which was addressed in the second briefs (Br. II).

Plant Held for Future Use

C&SOE's plant in service valuation includes $13,382,000 of investment attributable to plant held for future use (Co. Ex. 4, Sch. B-1; Co. Ex. 11A, pp. 7, 8). The Staff recommends exclusion of this amount on the grounds that plant held for future use should not be included in rate base until it is actually placed in service and becomes used and useful (Staff Ex. 2, pp. 7, 8). The Company objected to this exclusion, arguing that the Federal Energy Regulatory Commission (FERC) has determined that property held for future use should be included in rate base, that the Company's holding of this land ultimately benefits the customers and that the property should be considered as used and useful. The Company's arguments are not persuasive. The fact that the property may eventually be used to provide service to customers does not make the land currently used and useful for ratemaking purposes. Ohio law does not permit the inclusion of property held for future use in rate base, and the FERC practice in this regard has no impact on the Commission's decision as to whether the land should be included in plant in service. Thus, we find that the Staff's exclusion is appropriate and the Company's objection is overruled.

Cancelled Projects

The Company proposed an addition to rate base of $1,805,000 which represents the cost of certain cancelled construction projects (Co. Ex. 5, pp. 4, 5 and Schs. B-1, B-1.1). These production and transmission projects were cancelled after the acquisition of the Company by American Electric Power because they were no longer considered necessary (Co. Ex. 11, p. 7). The Staff has excluded this addition to rate base, citing as authority Consumers' Counsel v. Pub. Util. Comm., 67 Ohio St. 2d 153 (1981). The Applicant has objected, arguing that Consumers' Counsel dealt with the allowance of a test year expense rather than inclusion of the amount in rate base.

We cannot agree with the Company's argument. The Consumers' Counsel case held that the costs of terminated nuclear generating stations could not be amortized over a ten year period because recovery of such costs from the utility's ratepayers would be inconsistent with the ratemaking formula contained in Section 4909.15(A)(4), Revised Code. That section provides that the Commission shall fix just and reasonable rates based upon "[t]he cost to the utility of rendering the public utility service for the test period." The Court held that the costs of an investment that never provided any service to the utility's customers were not proper costs within the meaning of this section. Thus, the rationale of Consumers' Counsel is that consumers should not be paying for items which are not used to provide utility service. We believe that principle as set forth in Consumers' Counsel applies whether the cost is included as an expense item or a rate base item. The Company's objection to this Staff exclusion should be overruled.

Stand-by Reserve Units

The Staff has excluded from plant in service a number of generating units which the Applicant had classified as stand-by reserve in 1981 (Staff Ex. 1, p. 21 and Sch. I-8.2a). The Company transferred all seventeen of these peaking units to stand-by reserve in the spring of 1981 prior to the test year (Tr. X, p. 17). It was the Company's classification as such which prompted the Staff to initially consider the units as not used and useful. This assumption was verified by a field inspection which confirmed the Staff's opinion that the units were not used and useful (Tr. X, p. 10). The Company objects to the Staff's exclusions, claiming that some of the units had been used during the test year, that the units that the Staff identified as company basis. However, in his direct testimony, Mr. Fox recommended using a new, "simpler" methodology which resulted in the new figure of $2,728,132. The Staff's revised method involves the use of a floor and parking space allocation. Mr. Fox developed this allocation by assigning 1/7 of the total cost of the garage to the Company since the basement floor (one of seven floors) is completely used for Company purposes (Tr. X, p. 43). The remaining 6/7 were allocated based upon the ratio of parking spaces used by the Company (569) (Tr. X, p. 43; Tr. XII, p. 2-4a). This allocation percentage (63.12%) was then applied to the total original cost of the garage ($4,322,135) to derive the rate base exclusion of $2,728,132 on a total company basis.

The Applicant's exclusion is based on the incremental garage investment associated with employee parking (Co. Ex. 11A, p. 9) and an analysis of direct costs (Co. Ex. 27, Sch. rebuttal WRF-2). The Company contends that its method was employed and approved by the Commission in C&SOE's last rate case (Case No. 78-1438-EL-AIR) and that the Staff's application of a single allocation percentage to the entire garage incorrectly assumes that the total investment is spread equally between the different floors and that office furniture, tools, and shop and garage equipment are used in the same proportion as the parking spaces. The Company asserts that only those costs comprising the investment in the garage which are parking-related, as opposed to service-related, should be used to derive the rate base exclusion.

The Commission recognizes that neither the Staff's nor the Applicant's exclusion represents an exact quantification of the costs associated with employee parking which should be excluded from plant in service. But the question remains as to which recommendation provides the more reasonable estimate of the non-utility portion of the garage. The Commission is of the opinion that there are several problems with the Applicant's approach which render it unacceptable for use. Company witness Forrester testified that the Company has not excluded any land associated with the garage (Tr. XII, p. 17), apparently on the assumption that all of the land is utility related. We do not believe this assumption is reasonable. Nor has the Company excluded any amount for equipment or facilities which are used to service the non-utility property and the employee parking function (Tr. XXII, p. 21). The Company's exclusion also fails to account for the labor costs of maintaining the parking portion of the garage and the costs associated with collection of the parking fees (Tr. XII, p. 19-21). We believe that the exclusion from plant in service should reflect these items and that the Applicant's proposal fails in this respect.

C&SOE argues that its proposed exclusion based on the incremental garage investment associated with the employee rented parking spaces was the method accepted by the Commission in C&SOE's last rate case and, on that basis, should be accepted again. We cannot agree. The method of calculating the exclusion for the non-utility portion of the Company garage was not raised as an issue in the last proceeding. Once the Staff questioned the Company's excluded amount in <u>this</u> case, the burden is upon the Applicant to establish the reasonableness of its proposal; the Company cannot merely rely on the fact that the method was not questioned before. We believe the Applicant has failed to establish the reasonableness of its proposed, exclusion given some of the deficiencies brought out in the record. We recognize that the Staff's proposal may not precisely quantify the employee parking costs, but we believe that the Staff's estimate more closely approximates that portion of the garage which is related to the non-utility function. We will, therefore, adopt the Staff's recommended exclusion figure of $2,728,132.

the 20 percent limitation, which when applied to the Commission's final rate base determination excluding the allowance for construction work in progress, limits the allowance to $191,119,400 (See "Rate Base Summary" infra). Applicant seeks full utilization of the allowance to the 20 percent bound. The Staff has reviewed each of the proposed projects and determined that all of the projects exceed the 75 percent complete requirement and are eligible for inclusion in the CWIP allowance (Staff Ex. 1, p. 25). No party objected to inclusion of the Conesville project and we are of the opinion that the date certain jurisdictional cost of $275,000 should be included in the CWIP allowance in this case (Staff Ex. 1, Sch. I-10).

Unfortunately, our task in evaluating inclusion of the Zimmer projects in the CWIP allowance is not nearly so simple. Zimmer Unit No. 1 is a nuclear generating facility being constructed by the CCD Companies, C&SOE, the Cincinnati Gas & Electric Company (CG&E), and the Dayton Power & Light Company (DP&L). CG&E is the managing utility and its share of the plant is 40 percent, while DP&L's share is 31.5 percent and C&SOE's portion is 28.5 percent (Tr. VIII, p. 42).

The Zimmer plant has been the focus of a great deal of controversy due to several factors. The construction of the plant has been plagued with numerous delays, resulting in postponed in-service dates and ever escalating revised budgets. The project was first scheduled to go into service in 1975 (Tr. VIII, p. 93; Tr. IX, p. 10) but the in-service date has been revised approximately nine times in the ten years the plant has been under construction (Tr. VIII, p. 93). The current estimated in-service date, testified to by Company witness Fenstermaker, is set in mid-1983, which means fuel loading would occur in December, 1982 (Co. Ex. 20, p. 2). These dates reflect a revision to the testimony as originally filed which had indicated a fuel load date of July, 1982 with commercial operation to occur in January 1983. The original total cost projected for Zimmer was approximately $235,000,000 (Cincinnati Gas & Electric Co., Case No. 81-66-EL-AIR, Tr. X, pp. 205-215). The latest budget estimates reflect a cost of approximately $1.5 billion for the total project, including allowance for funds used during construction (AFUDC) (Tr. VIII, p. 42). The record also reflects that for each month's delay in the in-service date, the costs increase by about one percent, or $15,000,000, most of which is attributable to AFUDC (Tr. VIII, p. 42).

Obviously, given the amount of money associated with the construction of this nuclear facility, the impact of including this project in the construction work in progress allowance is significant from both the Company's and the consumer's viewpoint. Testimony on this issue alone involved approximately four hearing days, during which a total of eight witnesses testified.

Initially, the Commission must determine whether or not the Zimmer project is 75 percent complete before deciding whether all, part, or none of the dollars associated with the construction project should be included in rate base. Section 4909.15(A), Revised Code requires that a physical inspection of the project be made to determine that the project meets the 75 percent complete requirement. The record reflects that both the Applicant and the Staff conducted a physical inspection of the plant on or about date certain; the Company determined that the project was approximately 97 percent complete (Co. Ex. 20, p. 3). Company witness Fenstermaker testified that the Zimmer unit was about 97 percent complete as of date certain based on a physical inspection and an earned manhours expended test (Co. Ex. 20, p. 3). Staff witness Fox testified that the Zimmer unit was more than 75 percent complete at date certain and therefore eligible for further consideration by the Commission (Staff Ex. 2, p. 27). The Staff's approach in this case, as in all recent cases, is to make a finding as to whether a CWIP project is 75 percent comeffort is essentially completed (Tr. VIII, p. 40). Regarding the licensing effort, Mr. Fenstermaker indicated that on June 21, 1982, the Atomic Safety and Licensing Board issued an initial decision which resolved all pending contentions in favor of licensing the plant, with the exception of issues concerning off-site emergency preparedness plans (Tr. VIII, p. 31). Mr. Fenstermaker also noted that the Nuclear Regulatory Commission (NRC) Region III had issued a Systematic Assessment of Licensee Performance report on June 29, 1982 which covered the period October 1, 1980, through March 31, 1982. The witness testified that nothing contained in these reports altered his opinion as to when the plant would be loaded with fuel or declared commercial (Tr. VIII, p. 43). He believes the Zimmer plant will be physically operational by the end of 1982 but recognizes that there may be delays because of federal regulatory matters (Tr. VIII, p. 41,107). The witness stated that the Quality Confirmation Program (QCP) at the Zimmer plant was instituted in response to the NRC's concerns about verification of quality assurance and quality control (Tr. VIII, p. 110). The QCP, which consists of about ten tasks, is designed to confirm the documentation of construction reports; the program has to be completed by the fuel load date (Tr. VIII, pp. 90-91). Mr. Fenstermaker acknowledged that the program has involved some minor rework and that some additional rework may be required in the future (Tr. VIII, p. 91).

Mr. Earl Borgmann, Senior Vice-President of Engineering and Electric Production for CG&E, the company responsible for the construction of Zimmer, was called on cross by OCC. Mr. Borgmann testified that the target date for fuel loading is December, 1982 and that, from a construction standpoint, that date is achievable although it would require considerable overtime (Tr. IX, p. 12). Mr. Borgmann enumerated the critical paths which must be completed before fuel loading: construction, licensing, completion of the QCP, and pre-operational testing (Tr. IX, pp. 13, 25). Mr. Borgmann feels that the confirmation program has an excellent chance of being completed by December 31, 1982. However, Mr. Borgmann conceded that given the four critical paths which must be met, there is some question as to whether the Zimmer plant will meet the projected in-service date of mid-1983 (Tr. IX, pp. 25-26). The witness acknowledged that the QCP, which began in the summer of 1981, and the NRC investigations which led to the fine which was assessed against CG&E, delayed the projected fuel loading date in 1981 by about eight or nine months (Tr. IX, p. 111). Mr. Borgmann testified that from an economic standpoint it would be less expensive to intensify construction efforts than to incur additional AFUDC, but this course of action would only make economic sense if there were no licensing or regulatory delays after the construction was complete (Tr. IX, pp. 116, 120). Mr. Borgmann is of the opinion that fuel loading at Zimmer will certainly occur within 1983 (Tr. IX, p. 125).

Also appearing in this proceeding to testify regarding the Zimmer Project was Mr. Robert Warnick, Director of the Enforcement and Investigation Staff, Region III, of the U.S. Nuclear Regulatory Commission. Mr. Warnick testified pursuant to a request by Chairman Kelly of this Commission that a witness testify on behalf of the NRC. Mr. Warnick explained that before an operating license is granted for a nuclear plant, an inspection program must be completed; after that, the region would make a recommendation to headquarters that the license be granted by the NRC. There would also be a recommendation made by the Atomic Safety and Licensing Board (Tr. XI, pp. 15-16). Mr. Warnick testified that the Region III inspection has not yet been completed and will not be complete by the end of 1982 (Tr. XI, p. 16). Mr. Warnick specifically stated that fuel loading will not occur in December 1982, and agreed that it is unlikely that Zimmer can be placed in commercial operation during 1983 (Tr. XI, p. 17). A third-party audit of the Zimmer Project has been

As mentioned previously, the Commission is normally inclined to include an allowance for CWIP in rate base because of the overall benefits it can provide to the Company and its customers. However, we have also recognized that the exercise of the discretion vested in the Commission by the General Assembly in this area must be based on the specific facts of each particular case.

After carefully reviewing the record presented in this case and having given the matter careful consideration, we are of the opinion that it is reasonable in this case to include twenty-five percent of the total dollars associated with the Zimmer project in the CWIP allowance. We conclude that inclusion of one quarter of the Zimmer costs will provide some recognition of the fact that C&SOE has been involved in construction of this extremely expensive nuclear plant, which has been going on for about ten years and which has required a great deal of the Company's capital. At the same time, we believe inclusion of 25 percent of the costs will not unduly burden the Company's customers who continue to wait for this facility to begin producing electricity.

We recognize that our decision in the instant case varies from our treatment of this issue in C&SOE's last rate proceeding (Case No. 78-1438-EL-AIR [Opinion and Order, December 12, 1979]), and our other recent decisions regarding inclusion of the Zimmer project in the CWIP allowance (See Cincinnati Gas & Electric Co., Case No. 81-66-EL-AIR [Opinion and Order, January 27, 1982] and Dayton Power & Light Co., Case No. 81-21-EL-AIR [Opinion and Order, February 3, 1982]). However, we believe the record in this case warrants our decision to include Zimmer at only 25 percent. Specifically, in C&SOE's last rate case we determined that 50 percent of the Zimmer project should be included in CWIP based, in part, on the conclusion that Zimmer would be providing service for about half of the period during which the rates set in that case would be in effect. Obviously, that conclusion has not proven accurate. The assumption that Zimmer would be in service for a portion of the period the rates would be in effect was also made in the CG&E and DP&L cases, wherein the Commission accepted the Company's testimony regarding the in-service date. Again in those cases the assumption did not prove to be correct. We believe the testimony of Mr. Borgmann of CG&E and Mr. Warnick of the NRC indicates that C&SOE's projected fuel load date of December 1982, and in-service date of mid-1983 will not be met. Given this circumstance, we believe it is reasonable to limit the allowance for Zimmer to 25 percent of Zimmer's total costs.

Additionally, we note that the decision in C&SOE's last case was partially premised on the conclusion that "the delay in the in-service date for Zimmer and the additional projected expenditures on the project are due to factors that are not within the control of this Company, or even of the project leader, CG&E." Columbus and Southern Ohio Electric Company, Case No. 78-1438-EL-AIR [Opinion and Order, December 12, 1979], p. 10). Reluctantly, we must now acknowledge that this statement may no longer be applicable in the present circumstances. The testimony Mr. Warnick of the NRC evidences the fact that there were problems with CG&E's supervision and documentation of the construction program. Mr. Borgmann of CG&E testified that there had been some delay in the in-service date due to the NRC investigation and the quality confirmation program. Evidence concerning the cost of the NRC investigation and the quality confirmation program was not definitive in this proceeding but it is apparent that some additional costs have been incurred. Consequently, viewing the record in its entirety, we believe that the reasonable and appropriate allowance for construction work in progress should include only 25 percent of the total jurisdictional costs of Zimmer or $73,144,000, and 100 percent of the Conesville costs or $275,000 for a total allowance for CWIP of $73,419,000.

The Company also objects to the Staff's operation and maintenance expense to the extent it reflects Staff adjustments to the various expense issues in the case. Staff witness Montgomery agreed that the determination on these issues should be reflected in the working capital computation (Tr. XVI, pp. 29-30) and we will find accordingly.

Fuel Expense Revenue Lag

The Staff has recently included a separate fuel expense revenue lag in the working capital allowance to account for the operation of the EFC rules now contained in Chapter 4901-1-11 Ohio Administrative Code (O.A.C.) (Staff Exs. 10, 10A, 10B). Staff witness Montgomery explained that prior to the implementation of the EFC rules, the Staff recognized the fuel expense revenue lag in the cost of service through annualization of fuel revenues and fuel expenses, which negated the need for a separate allowance in working capital (Staff Ex. 10, p. 13). However, since the EFC rules synchronize fuel revenues and expense, but ignore the timing differences between cost incurrence and revenue recovery, the Staff believes it is necessary to expressly provide for the recovery lag in working capital (Id., p. 14). The Staff recommends a $3,188,000 allowance in this proceeding (Staff Ex. 10B, Sch. RGM-3).

OCC objects to the recognition of this lag as an improper selective adjustment to the formula method and on the basis that the lead/lag study upon which the Staff relied did not take into account the joint operation of Conesville No. 4 and the reimbursements of fuel expense that C&SOE receives from the two other companies involved at Conesville. OCC witness Miller believes the payments to C&SOE from the other two companies need to be considered in the Company's lead/lag study (OCC Ex. 37, p. 6). However, Mr. Miller admitted during cross-examination, that if the lead/lag study reflected only the coal purchases at Conesville that were related to C&SOE's share of the coal, his proposal would not be necessary (Tr. XVII, p. 83). There is no evidence of record to indicate that the data used in the Company's lead/lag study reflects anything other than C&SOE's share of the coal at Conesville Unit No.4. Consequently, OCC's objection to this aspect of the fuel expense revenue lag should be overruled. OCC's objection as to recognition of the lag in working capital should also be overruled. This objection has been previously addressed and rejected by the Commission in other recent decisions. See, e.g., Ohio Power Co., Case No. 81-782-EL-AIR (Opinion and Order, July 14, 1982); Cincinnati Gas & Electric Co., Case No. 81-66-EL-AIR, (Opinion and Order, January 27, 1982); Dayton Power and Light Co., Case No. 81-21-EL-AIR (Opinion and Order, February 13, 1982).

Deferred EFC Balance

The Staff has recommended an addition to working capital of balances resulting from the adoption of deferred fuel cost accounting in connection with the implementation of the Commission's Electric Fuel Component (EFC) Rules. The Company agrees that the deferred fuel balance should be recognized in some way, and that inclusion in Working Capital is one method (Tr. IV, p. 105). However, the Company has expressed a preference that the matter be treated as part of the EFC proceedings amending the rules as proposed in Case No. 80-928-EL-ORD (Co. Br. I, p. 43). OCC also urges the Commission to consider an EFC interest provision rather than including the deferred fuel expense in working capital (OCC Br. I, p. 21). Consistent with other recent decisions (See Ohio Power Co., Case No. 81-782-EL-AIR, [Opinion and Order, July 14, 1982]; Cleveland Electric Illuminating Co., Case No. 81-146-EL-AIR, [Opinion and Order, March 17, 1982]), we find that the deferred EFC fuel expense should not be included in working capital in this proceeding. The Commission is presently considering an EFC interest provision in the generic proceeding.

Company objected. The Company argues that these items represent costs which must be paid in advance by the Company and which should, therefore, be recognized in working capital (Co. Ex. 11, pp. 3, 4). The Commission has determined that prepayments are improper for inclusion in the formula method. See Cincinnati Gas & Electric Co., Case No. 80-260-EL-AIR (Opinion and Order, March 18, 1981); Cleveland Electric Illuminating Co., Case No. 80-376-EL-AIR (Opinion and Order, May 1, 1981). Likewise, the Commission has decided not to recognize budget billing balances as an offset to working capital and the Commission decision on this point has been affirmed by the Supreme Court of Ohio in City of Cleveland v. Public Utilities Commission, 70 Ohio St. 2d 290 (1982). While the Applicant attempts to cite that case as authority for recognizing budget billing balances in working capital, we do not believe the Company's evidence concerning the constancy of budget billing balances warrants a finding that these balances should be included as an allowance in working capital. The Company's objections should be overruled.

Materials and Supplies

C&SOE's working capital allowance contains a materials and supplies component based on the 13 monthly balances for the test year ending June, 1982 (Co. Ex. 11, p. 13; Tr. IV, p. 95). Staff initially proposed using the 13 monthly balances ending December 1981, since the Applicant's balances contained sizeable unexplained increases for the forecasted portion of the test year (Staff Ex. 2, pp. 21-22). Both the Applicant and the Staff agree that actual test year balances are preferable to using either projected or an earlier 13 month period (Staff Ex. 2, p. 23; Tr. IV, p. 96). OCC advocates the use of a 13 month average but valued up through date certain rather than including any months beyond the date certain. As we are here determining a rate base item, we feel that OCC's and the Company's positions should be rejected. While we would prefer to use the actual 13 monthly balances for the test period, we have not been provided with the requisite data. Consequently, we will adopt the Staff's corrected figure of $13,510,000 which represents the latest known actual data available.

Clinch River Liquid Metal Fast Breeder Reactor

Both the Staff and OCC have recommended an adjustment to rate base reducing working capital to reflect the amount of accruals remaining in a deferred accrued liability account established for payments which were to be made by the Applicant to the Breeder Reactor Corporation. Originally, the Staff had not included this adjustment in its rate base calculations but OCC objected and the Staff agreed that such an adjustment is warranted (Co. Ex. 10, p. 8). The Company was making payments to the Edison Electric Institute for research of the liquid metal fast breeder reactor (LMFBR) project. Company witness Forrester testified that C&SOE made yearly payments during the years 1972 through 1979, with the last payment being made in December, 1976. Because of the uncertainty of the project, the Company ceased making payments to the Edison Electric Institute but the Company accrued the liability in Account 242 and included its annual commitment as a test year expense in its last rate case (Tr. IV, p. 69). In December, 1981 the Company wrote off $428,000 of accrued liability for the LMFBR project by debiting the liability and crediting expenses. Since these amounts were all accrued prior to January, 1980, the Company argued that the credit to expense should be excluded from the test period (Co. Ex. 11A, pp. 6-7; Tr. IV, pp. 69-71). The Company also argues that because the deferred accrued liability was not on the books at date certain it should not be reflected as a deduction from rate base (Tr. IV, p. 71).

The Staff and OCC both argue that the jurisdictional portion of the deferred accrued liability should be deducted from rate base since it is cost free capital which has been collected from

Jurisdictional Working Capital Allowance	$ 48,335

Other Rate Base Deductions

The Staff reduced the rate base by the jurisdictional portions of the date certain balance of deferred taxes resulting from accelerated amortization, liberalized depreciation, other deferred income taxes, and the accumulated unrestricted investment tax credit (exclusive of Investment Tax Credits [ITC] on qualified property additions placed in service after December 31, 1980). The Staff also reduced the rate base by the jurisdictional portions of the customer advances for construction balances as of the date certain (Staff Ex. 1, p. 25; Sch. I-12). Applicant took exception to Staff's deduction of $19,121,000 which represents the unrestricted 4% portion of the deferred ITC balances from rate base, claiming that such a deduction frustrates the intent of the law, which is to allow the Company and its customers to share the benefit of the tax credits (Co. Ex. 12, pp. 14-15). This same issue was presented in C&SOE's last rate case and the Staff position was upheld (See Case No. 78-1438-EL-AIR [Opinion and Order, December 12, 1979], pp. 15, 16). The Staff's deduction from rate base of the 4% portion of the deferred investment tax credits is consistent with other Commission decisions and should be adopted.

Rate Base Summary

Taking into account the disposition of the issues as discussed above, the Commission finds the jurisdictional statutory rate base as of the date certain, December 31, 1981, to be as follows:

Jurisdictional Rate Base
(000's Omitted)

Plant in Service		$ 1,286,555
Depreciation Reserve		332,594
Net Plant In Service		$ 953,961
Plus:	CWIP	73,419
	Working Capital	48,335
Less:	Deferred Taxes and Other Deductions	46,699
Jurisdictional Rate Base		$ 1,029,016

OPERATING INCOME

Test Period

Pursuant to the Commission's Entry of September 30, 1981 in this case, the Company filed data for a traditional "six and six" test period, the twelve months ended June 30, 1982 (Period I), along with the data for its proposed fully-projected test year, the twelve months ending September 30, 1983 (Period III). Those data were filed on December 31, 1981 along with the application (Co. Exs. 2 and 3). On March 1, 1982, the company filed updates of those data (Co. Exs. 4 and 5).

On June 18, 1982, ten days prior to the start of expert testimony, the Company filed data pertaining to the twelve months ending September 30, 1982 (Period II) (Co. Ex. 6). As the Company explains on brief, the filing of this data was prompted by the passage of Amended Substitute Senate Bill No. 378, which amends Section 4909.15(C), Revised Code, to prohibit the approval of any test period ending more than nine months after the filing

Buckeye Power Delivery Charges

The discussion of this item in the briefs indicates some confusion about the Staff's proposed adjustment for Buckeye Power Delivery Charges. The Company records revenues for Buckeye Power as month end set-ups, in situations in which the exact amount is not known when the books are closed, and then reverses those entries the following month, when the exact amount does become known. The Staff, in an attempt to arrive at the figures applicable to the test year, reversed the Company's reversal; the Company objected.

In his testimony, Staff witness Hines agreed that its original adjustment to reverse the month-end set-up charge was not required; he instead, requested the actual payments received from Buckeye for the first six months of the test year. The use of these figures was termed a "revised adjustment."

OCC insists that the Staff's "original adjustment" be approved, since it is consistent with the Commission's treatment of a similar item in Ohio Power Co., Case No. 81-782-EL-AIR (Opinion and Order, July 14, 1982); the Staff insists that its "revised adjustment" is correct. What makes all of the argument, in the original briefs and in the replies, so ridiculous is that the "original adjustment" and the "revised adjustment" both provided the same end result (Staff Ex. 1, Sch. I-3.3; Staff Ex. 11, Rev. Sch. I-3.3). The adjustment, whichever one wants to pick, is necessary to arrive at test year expenses; the Company's objection is overruled.

RCS Revenues and Expenses

The Company included in its operating income figures revenues and expenses for the residential conservation service (RCS) program. The revenue amount was included in other electric revenue (Tr. IV, p. 154). The expense figure of $545,882 was made up of six months of actual expense, and an estimated figure for the second six months of the test year (Tr. IV, p. 147). The Staff made no adjustment to those figures (Staff Ex. 8, p. 9).

Consumers' Counsel argues that the RCS revenues and expenses should be adjusted to reflect the Company's actual experience. It points to the fact that the estimated portion of the expense figure was based on a four to five percent anticipated response level, while the Company's experience has been less than a one percent response level (Tr. IV, p. 148), and argues that the Company's estimate will overstate expenses.

OCC witness Haskins proposes that only $214,674 be included in test year expenses for this item (OCC Ex. 1B, Sch. MRH-5.15). He used the actual number of audits completed in the first nine months of the test year, and multiplied that by the cost per audit, provided by the Company, of $639 for a Class A audit and $179 for a Class B audit (Id. at 17). OCC argues that Mr. Haskins' calculation results in a very conservative adjustment to the Company's expense figure, because the $639 per Class A audit amount seems very high (OCC Br., p. 13).

While we have no way of knowing if the customer response to this program will increase as much as the Company has estimated, neither do we know if the actual number of audits for the nine month period July 1, 1981 through March 31, 1982 is representative of the demand for audits during the collection period. No testimony was presented on whether the response to the RCS program is increasing or decreasing. Mr. Haskins did not indicate why he felt that actual figures for a nine month period should be used without annualizing.

We believe that we must rely on the judgment of the Staff in this regard. Mr. Hines testified that the amount included in test year expenses was "not unreasonable when compared to other of employees for the last six months of the test year (OCC Ex. 36, p. 2).

The Company opposes such an adjustment. Mr. Forrester testified that the variance is attributable to the fact that the Company was in a hiring freeze, and the employee level was being reduced due to attrition (Tr. IV, p. 141). The Company argues that the depressed employee level does not represent normal operations, nor is it indicative of employee levels which are to be expected during the collection period (Co. Br. II, p. 16). OCC disputes that assertion, pointing out that Mr. Forrester could not testify when the hiring freeze will be lifted (Tr. IV, p. 141).

The Staff did not feel that an adjustment was necessary, presumably, since it did adjust for Period III when the variance was greater, because the magnitude of the variance was not sufficient to warrant such an adjustment.

As OCC points out on brief, the Commission has in past cases approved adjustments such as the one advocated by OCC. Dayton Power and Light Co., Case No. 80-687-EL-AIR (Opinion and Order, July 15, 1981); The Ohio Bell Telephone Co., Case No. 81-436-TP-AIR (Opinion and Order, April 21, 1982). Given the Commission's view that a difference between actual and forecasted data is not, of itself, a reason to discard the projections, there must be particular circumstances which warrant an adjustment to the projected figures. We believe the facts in this case are in line with those previous cases in which adjustments have been made. Here, where the hiring freeze has not yet been lifted, and no end is in sight, an adjustment appears to be warranted; although the reduced number of employees may not reflect normal operations, it is at this point the best indicator of collection period employee levels.

The variance between the budgeted and actual number of employees ranged from 96 in January 1982 to 150 in June 1982 (OCC Ex. 36, Sch. MRH-5.4b). Mr. Haskins used the average variance (70) to calculate his adjustment. We believe his adjustment to be reasonable, and will adopt it for purposes of determining labor expense.

Service Corporation Fees

The Company proposes a $1,358,000 annualization adjustment for AEP Service Corporation billings (Co. Ex. 4, Sch. C-3.15). The Staff agrees with such an adjustment; it proposes an increase to operating expenses of $727,000 (Staff Ex. 11, Rev. Sch. I-3.9). That figure reflects the elimination of a billing lag for this item, and also excludes $1,995 in lobbying expenses which had been included in the budgeted portion of the test year (Staff Ex. 8, pp. 11, 12-13).

OCC opposes this adjustment, because there has been no corresponding recognition of the reduction in costs resulting from the acquisition of C&SOE by AEP (OCC Br. II, pp. 16-17). OCC witness Miller pointed out that the Securities and Exchange Commission had permitted the allocation of service corporation fees to the Company at a gradually increasing level between July 1, 1980 and January 1, 1982, and relied on that fact in concluding that there was some possibility of a duplication of costs during the acquisition of C&SOE by AEP (OCC Ex. 1, pp. 43, 46). OCC argues that the SEC order recognizes "the increasing effect of the AEP acquisition through the first six months of the test year" (OCC Br. II, p. 17).

We disagree that the "phase-in" period used by SEC can be said to track the period over which the effects of the acquisition were actually experienced; there is no indication that there is a direct correlation. OCC has not provided any evidence of specific cost savings which resulted from the acquisition; if

1977), aff'd sub nom. Welfare Rights v. Pub. Util. Comm., 55 Ohio St.2d 1 (1978). The Company's objection should be overruled.

Depreciation

The Company's proposed depreciation expense is based on its proposed accrual rates, and reflects adjustments to amortize the variance between book and theoretical reserves, and the amortization of cancelled projects. The Staff made adjustments to remove the amortization of the reserve variance, the amortization of cancelled projects, and the depreciation expense associated with land rights, and to reflect its exclusion of certain property from the rate base (Staff Ex. 1, Schs. I-3.18 and I-9.1).

The Company objects to the Staff's refusal to assign an accrual rate to land rights. The Staff agrees that such investments are depreciable, but Staff witness Fox assigned them a zero accrual rate, because such rights are granted in perpetuity, and because he found no retirement experience that would indicate a shorter useful life (Staff Ex. 2, pp. 13-14). The Commission has agreed with the Staff's position on this matter in past cases under similar circumstances (See, e.g., The Dayton Power and Light Co., Case No. 81-21-EL-AIR [Opinion and Order, February 3, 1982]) and will do so again here.

The Company also objects to the Staff's failure to include in the depreciation expense the amortization of the cancelled nuclear plants and the reserve variance. On the first item, the Company has provided no compelling argument. Consistent with all of our recent decisions regarding the cancelled nuclear plants, the Company's objection should be overruled.

Company witness Aikman provided testimony on the second item (Co. Ex. 14B), and Staff witness Fox provided testimony in support of his position on the issue (Staff Ex. 2). According to Mr. Aikman, the magnitude of the reserve variance is $21.6 million by his calculation, and $18.4 million using Staff figures (Co. Ex. 14B, p. 2). He argues that the variance is attributable to increasing removal costs associated with retired property, and that because it takes several years to discern a trend in salvage and removal cost history, as well as life experience, he disagrees with Mr. Fox's position that reserve variances can generally be ignored (Id. at p. 5).

We are not sure we understand what one thing has to do with the other; presumably he is arguing that because the variance was created through no fault of the Company, the variance should not be ignored. That argument has little merit. We agree with Mr. Fox that the depreciation expense determined for this case should "allow for capital recovery at a rate as nearly representative of the actual consumption of the property during the test period as possible," and that the amortization of the reserve variance is inappropriate here, where the theoretical and book reserve, as percentages of the Company's total plant investment are "in excellent agreement" (Staff Ex. 2, p. 21). The Company's objection should be overruled.

Rate Case Expense

The Company proposes that the total amount of its rate case expense be included in test year operating expenses (Co. Ex. 3, Sch. C-3.2), and objected to the Staff's two year amortization of this expense item. Staff witness Hines testified that the Staff is reluctant to accept a one year amortization period, in view of the Company's filing history. Mr. Forrester testified that he believes C&SOE in the future will have to file annually, the long period between this and the Company's last case having been caused by the initial, beneficial impact of joining the AEP system (Co. Ex. 11A, p. 2). Despite that testimony, we will accept the Staff's recommendation; until it is clear that the Company will, in fact, be filing annually, we will not approve does not agree that an out of period adjustment is appropriate, but Mr. Montgomery does support a write-off of the accruals, as C&SOE does not anticipate making any further payments for the Clinch River project (Staff Ex. 10, p. 7). He therefore recommends a two year write-off of the accruals, believing that to be the expected life of the rates established in this proceeding (Id.). OCC supports this proposal (OCC Brief II, p. 7). We believe that the Staff's proposal is reasonable, and should be adopted.

PUCO and OCC Maintenance Assessments

The Staff used the actual 1982 assessments to compute the PUCO and OCC maintenance expenses; the Company used the actual amounts paid in 1982. OCC agrees with the Staff's use of the 1982 assessments, but objects to the Staff's failure to consider the credits available to the Company for 1982 (OCC Ex. 1, p. 49).

The Commission has rejected OCC's argument on numerous occasions (See, e.g., Dayton Power and Light Co., Case No. 81-21-EL-AIR [Opinion and Order, February 3, 1982]; Toledo Edison Co., Case No. 81-620-EL-AIR [Opinion and Order, June 9, 1982]), and must do so again here. Any attempt to determine the existence or amount of any credit in the future is speculative, and the credit which OCC witness Miller proposes relates to a prior year and is not a proper offset to the test year obligation (Staff Ex. 10, p. 23). We believe that the test year assessment provides the appropriate basis for determining a reasonable allowance for this expense item. OCC's objection should be overruled.

Excise Tax Rider

The Company has requested approval of a temporary rate surcharge to recover $4,848,000 in gross receipts tax payments made pursuant to a temporary one percent tax increase imposed by Amended Senate Bill No. 448 (Co. Ex. 11, p. 28). The Staff recommends against such a tariff rider, and the Commission agrees. Beginning with our decision in Columbia Gas of Ohio, Inc. (13 Municipalities), Case No. 80-1155-GA-AIR, et al. (Opinion and Order, December 23, 1981), we have excluded the temporary one percent excise tax increase from allowable expenses, finding that the temporary increase would not be in effect during the collection period and represented a past liability.

The Staff does believe that the Company's request for permission to amortize the balance of the associated deferred expense should be granted, relying, as did the Company, on the Commission's Opinion and Order in Ohio Power Co., Case No. 81-782-EL-AIR (July 12, 1982). However, OCC believes that reliance to be misplaced, arguing that the Ohio Power decision was based on the "bizarre" timing problem involved with that company (OCC Reply Br., p. 15). Although the circumstances in this case are not the same as those in Ohio Power, we believe here, too, that it would be inappropriate to require the write-off of the entire deferred balance in a single accounting period. We believe that the revenues authorized herein would permit the amortization of the deferred balance over a period not to exceed 36 months, and we will grant the Company's request.

Taxes Other than Income Taxes

Property Tax

The Company objected to the Staff's calculation of utility property tax expense (Co. Obj. I.B. 7). Staff witness Hines agreed that the Staff's calculation should be revised to reflect the exclusion of the non-utility property valuation as of December 31, 1980, and to reflect the use of the latest known tax rates (Staff Ex. 8, pp. 7-8). A revised figure was provided (Staff Ex. 11, Rev. Sch. I-3.19a), which should be adopted.

Allowance for Borrowed Funds Used During Construction

Although the Company originally proposed normalizing an amount for the allowance for borrowed funds used during construction for units 5 and 6 at its Poston Generating Station, Company witness D'Onofrio agreed at hearing that this item should not be normalized (Tr. V, p. 68). This is consistent with the position taken by the Staff and OCC (OCC Ex. 1, p. 53) on this issue, which position will also be adopted by the Commission.

Investment Tax Credit Feedback

The Company used a 35 year average life to determine the feedback of investment tax credits (ITC) (Tr. V, p. 82). That number was the result of a study performed some years ago by the Company's Construction Accounting Group. That study resulted in a finding that the average useful life of the relevant property was 33.9 years; the Company used a 35 year figure to ensure that the feedback of ITC occurred no more rapidly than ratably, in accordance with Option 2 of the Internal Revenue Code (Id.).

Although the Staff originally used the Company's proposed 35 year life, Mr. Montgomery revised his position in his testimony (Staff Ex. 10, p. 26), to agree with OCC witness Miller's recommendation of the use of a 30 year life (OCC Ex. 1, p. 56). Both Mr. Miller and Mr. Montgomery indicate that the 30 year life is that which results from the implementation of the Company's new depreciation accrual rates. The Company continues to argue that the average service life is 33.9 years, and objects that the use of a 30 year life might result in the loss of tax benefits (Co. Br. II, p. 28). However, the Company has provided no clue as to why it believes that the Internal Revenue Service would use a 33.9 year life, determined in 1975, rather than the latest estimate of 30 years. The Commission agrees that the 30 year life should be used. The Company's objection should be overruled.

Operating Income Summary

Consistent with the foregoing discussion, the Commission finds the Company's jurisdictional adjusted operating income for the test period, July 1, 1981 to June 30, 1982, to be as follows:

(000's Omitted)

Operating Revenues	$ 588,651
Operating Expenses	
Operation and Maintenance	366,900
Depreciation	42,575
Taxes Other Than FIT	48,897
Federal Income Tax	26,609
Total Operating Expenses	$ 484,981
Net Operating Income	$ 103,670

PROPOSED INCREASE

A comparison of jurisdictional test year operating revenue with allowable jurisdictional expenses indicates that under its present rates, the Applicant realized income available for fixed charges in the amount of $103,670,000 based on adjusted test year operations. Applying this dollar return to the jurisdictional rate base results in a rate of return of 10.07 percent under present rates. This rate of return is below that recommended as reasonable by either of the expert witnesses testifying on this subject. The Commission, therefore, finds that the Company's present rates are insufficient to provide it reasonable compensation and return for the electric service rendered customers affected by this application. Rate relief is required at this time.

actual embedded cost of these senior securities, updated to May 31, 1982, be used in determining the weighted cost of capital (Co. Ex. 7B, 7C; Staff Ex. 12). Accordingly, the Commission finds the embedded cost of long term debt to be 10.12 percent and the embedded cost of preferred stock to be 10.33 percent.

While the Applicant accepts the use of the AEP consolidated capital structure and cost of senior capital for purposes of this case in setting an overall rate of return, the Company contends that the actual embedded cost of this capital for C&SOE is greater than AEP's cost on a consolidated basis. Thus, the Company urges the Commission to recognize this in setting the overall rate of return (Co. Br. I, p. 52). The Applicant has presented no evidence to substantiate this contention and we must reject it.

Cost of Common Equity

As previously mentioned, the primary controversy in the rate of return area focused on the cost to be assigned the equity component of the capital structure. We have long recognized that the cost of common equity can only be estimated, unlike the costs of debt and preferred stock which are derived through a largely mechanical process. There are a number of valid approaches to the cost of equity determination, but in the final analysis, the results under all these approaches are heavily influenced by the judgments and assumptions of the sponsoring witnesses. Obviously the Commission must use its discretion in adopting the recommendation that we believe to be the most appropriate in light of the evidence presented. Applicant's witness Benore recommends a cost of equity of at least 18.5 percent. Staff witness Hedman has determined the cost of equity to be between 15.43 and 16.45 percent. Mr. Benore's cost of equity is a composite of the results produced by his application of the discounted cash flow (DCF) comparison with the common stock of selected industrial companies, risk premium, and financial integrity methodologies (Co. Ex. 8, pp. 8, 48, 54). Mr. Hedman's range is based only upon a DCF analysis (Staff Ex. 4, p. 6).

The wide two to three percent variance in the witnesses' recommendations is not attributable solely to judgmental decisions in the use of data but rather reflects the fact that the Staff utilized a cost of capital approach which measures investor's required returns, while Mr. Benore adopted a model designed to achieve certain results as embodied in his financial integrity test.

Mr. Benore's first test, the risk premium test, attempts to measure the return necessary on AEP's common equity relative to alternative returns available in the bond market by measuring the spread between the yield on lowest risk capital, or long term U.S. Government Bonds, and the return to the investor in AEP common stock (Co. Ex. 8, p. 36). The determination of the spread is, in Mr. Benore's test, obtained from historical data and from the results of surveys on investor risk premium requirements conducted by Paine Webber Mitchell Hutchins Inc. (Co. Ex. 8, p. 38). For historical data, Mr. Benore utilized a study entitled "Stocks, Bonds, Bills and Inflation: Historical Returns (1926-1978)" by Ibbotson and Sinquefield, which computed the difference in such returns based on Standard & Poor's 500 Company Composite Index over the period 1926-1978. Mr. Benore used the study to demonstrate that annual returns on common stocks over this period exceeded returns on long term U.S. Government Bonds by 5.7 percentage points, according to the geometric measure. Mr. Benore added this return difference (5.7 percentage points), or risk premium, to the current yield on long term U.S. Government Bonds for the last 12 months (he used 13.0 percent) to derive a total return requirement for common stocks of 18.7 percent (5.7 percent - 13 percent) (Co. Ex. 8, p. 39). Mr. Benore feels that the 18.7 percent return requirement is applicable to AEP because the risk of investing in AEP is equal to that of common stocks level. Thus, Mr. Benore is of the opinion that the financial integrity test confirms that C&SOE's cost of common stock equity is at least 18.5 percent (Co. Ex. 8, p. 55).

In reviewing Mr. Benore's recommendation that the cost of C&SOE's common equity is at least 18.5%, and the three tests that he utilized to arrive at that figure, the Commission is of the opinion that Mr. Benore's approach cannot be relied upon as a reasonable approximation of the cost of common equity to the Company. We feel there are significant problems, as discussed below, with each of Mr. Benore's three tests and that none of the three can be relied upon individually or combined to provide a solid basis for establishing the equity cost component in this case.

Mr. Benore's risk premium analysis attempts to measure the risk premium through the use of historical data and the results of an investor survey. We have serious reservations about determining an appropriate risk premium based upon an investor survey which is of questionable accuracy and validity and which may be prone to bias. We cannot accept any risk premium based upon the use of such survey results. Nor do we believe the historical data relied upon by Mr. Benore produces a reliable result. We have on past occasions indicated our reluctance to use a risk premium, noting that the method may not produce reliable results where the risk premium is based on data from a period in which interest rates were significantly different than those which currently exist or in cases where the current rates are extremely volatile (See, e.g., Toledo Edison Co., Case No. 81-620-EL-AIR, [Opinion and Order, June 9, 1982, at p. 25]). In this instance, Mr. Benore's exhibits disclose substantial fluctuations in the spread of stock returns over bond returns and his testimony was revised at the hearing to reflect a change in the current interest rates (Co. Ex. 8, Ex. CAB-1, p. 30; Tr. III, p. 54). Also, given a period of changing interest rates, we consider it particularly important that some showing be made that the base value to which the risk premium is applied is appropriate. Finally, the historic returns on equity utilized by Mr. Benore may not be representative of the historic cost of equity actually associated with the stock analyzed. As Staff witness Hedman explained, the actual cost of equity to the S&P 500 is most likely to be below the historic return since the market to book ratio of market aggregate groups usually exceeds 1.0 (Staff Ex. 4, pp. 17-18). Consequently, Mr. Benore's estimated cost of equity using this methodology is overstated.

The DCF methodology employed by Mr. Benore incorporated allegedly comparable companies consisting of the Standard and Poor's 400 Industrials. This test indicated a return of 17.5 percent, and 18.4 percent after adjusting for market pressure and issuance costs (Co. Ex. 8B, p. 53). Mr. Benore's model incorporates a yield component of 11.4 percent and an expected rate of growth of 6.1 percent (Co. Ex. 8B p. 52). We find that Mr. Benore's methodology is a misapplication of the DCF formula and is essentially a mutated form of the comparable earnings test. The DCF methodology assumes an efficient market and results in a rate of return equal to returns which can be earned on investments of comparable risk by determining the cost of common equity of a unique and distinct company rather than the average of many allegedly comparable companies. The comparability of returns on other companies is implicit in the derivation and application of the model to a specific company and the use of a "comparable" index is not necessary (Staff Ex. 4, p. 17). Mr. Benore's use of a growth rate of 6.1 percent further indicates that Mr. Benore's approach no doubt estimates what investors might like to see rather than what they can reasonably expect (Tr. III, pp. 102-109). Mr. Benore continually asserts in his testimony that AEP should be regarded as equal to industrials in risk (Co. Ex. 8, pp. 51-52) but the market does not reflect this fact. Mr. Benore's methodology does not use information specific to AEP but rather uses information for other entities whose similarity to adjustment, it also recognized that the Commission has consistently rejected its argument in this area and thus did not pursue the matter in direct testimony or on brief. For the same reasons as set forth in Dayton Power and Light Co., Case No. 80-687-EL-AIR (Opinion and Order, July 15, 1981, pp. 34-36), we find that the Staff's proposal should be adopted herein. This adjustment produces a recommended cost of equity range of 15.43 and 16.45 percent.

After combining the appropriate factors and adjusting them accordingly, we are presented with a range of 15.43 percent to 16.45 percent for a return on common equity. The Staff traditionally adjusts its recommendation of a return on equity to present the Commission with an appropriate range rather than one specified point as an estimation. This method allows the Commission to exercise its discretion in selecting a specific point within that range to enable the rate of return to reflect specific facts and circumstances of the case presented. In selecting a point within the determined spread, the Commission finds factors present which persuade us that our judgment should fall in the upper end of the range.

As reported by the Staff, AEP has exhibited negative cash retained earnings per share for a period of some years, indicating that AEP has been forced into excessive reliance on AFDC earnings to fund its dividend (Staff Ex. 1, pp. 29-32). Although we might concur with the Staff's observation that a policy of increasing dividends without adequate earnings support is unlikely to have any positive effects on the Company's poor market-to-book ratio, the fact remains that this Company's financial picture has been somewhat bleak. We also recognize that C&SOE is involved in the construction of a nuclear generating plant and that such a program requires substantial amounts of capital for construction and carries the increased burden and risk associated with federal regulation and licensing. We are of the opinion that the increase in the investor's perceived risk associated with construction and operation of a nuclear facility should be reflected in the return on equity granted in this case. Consequently the Commission concludes that 16.20 percent, which is the midpoint of the upper half of Staff's recommended range, represents a reasonable estimate of the cost of equity capital to this utility.

Attrition Adjustment

Applicant's witness Benore proposes an additional adjustment to the overall cost of capital otherwise determined by the Commission in this proceeding as an allowance for attrition (Co. Ex. 8, pp. 63-64; Tr. III, pp. 111-114). Attrition refers to the shortfall or difference between the allowed and earned return on common equity, due to rising costs or revenues being less than anticipated, or because of changes in the embedded costs of debt and preferred stock and changes in the mix of capital. The Staff is opposed to the proposed attrition adjustment (Co. Ex. 4, p. 18).

The Commission has previously considered requests for attrition allowances and has generally rejected adjustments of this type, whether presented as an augmentation to the rate of return, as advanced in the instant case, or as an adjustment to test year expenses, on the basis that such adjustments are inconsistent with the test-year concept of rate regulation (Columbia Gas of Ohio, Inc. [Columbus], Case No. 76-704-GA-AIR [Opinion and Order, June 27, 1977], aff'd sub nom. Franklin County Welfare Rights Organization v. Public Utilities Commission, 55 Ohio State 2d 1 [1978]). We do not find any special circumstances in this case which warrant the granting of the proposed attrition adjustment; thus, we will deny it.

represents the joint impact of consumer income and weather on the demand for electricity, and the temperature variable is used to explain the responsiveness of weather sensitive appliances to changing weather (Id., p. 5). The study also attempted to test several other formulations of the demand relationship by including an additional explanatory variable of real personal per capita income and a second formulation in terms of real per capita income using the dynamic adjustment process. Dr. Houthakker's and Dr. Mahoney's testimony indicates that theory suggests that variations in real per capita income would affect demand, but that their econometric models did not produce statistically significant results using the real per capita income variables (Id., p. 10). Data Resources, Inc. (DRI) which conducted the statistical analysis, performed several diagnostic tests to analyze the validity of the results obtained from the econometric model used. Based on the data presented to it by C&SOE, DRI concluded that the models produced estimates of the price elasticity of demand which were appropriate for use in measuring curtailment for the Company's two residential classes of service (Co. Ex. 18, pp. 10-11).

Staff witness Wissman reviewed and analyzed the Applicant's proposed curtailment adjustment based on the following four separate and distinct elements: 1) economic theory; 2) the method employed in determining the physical curtailment; 3) given the physical curtailment, the method of determining the avoided costs; and, 4) the method of determining the avoided costs. The Staff recommends that any revenue curtailment adjustment be approved only after all four elements are satisfactorily presented and justified (Staff Ex. 1, p. 36). In the instant proceeding, Staff recommended against the proposed curtailment adjustment noting that items 2) and 4) above had not been adequately presented and justified by the Company (Staff Ex. 5, p. 2; Tr. XV, p. 22). Mr. Wissman identified several problems with respect to the models used by the Applicant. Specifically, Mr. Wissman noted that the models did not contain an express income variable; the base weights used in the construction of the appliance stock variable were based on a study using Houston area data and used demand data (KW) as a proxy for consumption (KWH); and the appliance stock variable is based on too few actual saturation observations and too many assumptions. In addition to these concerns regarding the models used to estimate the curtailment effect, the Staff was also concerned that C&SOE proposed a curtailment adjustment for only the residential class and not other classes and that the Applicant's approach is one-sided, in that the approach estimates the loss of revenue due to an increase in price but fails to consider the reduction in costs due to the reduction in sales (Staff Ex. 3, p. 2).

OCC witness Reinbergs objects to the proposed curtailment adjustment on two of the same bases as does Mr. Wissman, those being that the adjustment is applied to only the residential class and because it ignores the associated cost savings to the Company (OCC Ex. 2, pp. 24-25). The City also agrees with the Staff's criticism of the Applicant's proposed adjustment. Additionally, the City contends that C&SOE, in its allocation of rate base items to the residential class on the basis of peak contribution, has not made an allowance for the reduced KW demands that would result from a price increase (City Ex. 1, p. 28; City Br. I, p. 4). Further, the City believes that the Company did not take into account the effect of alternate energy sources and their relative price, and that Dr. Mahoney's elasticity coefficients are suspect because they differ from those which were originally used by AEP's System Planning Department (City Ex. 1, pp. 28-29; City Br., p. 5).

Based upon all of the evidence of record, the Commission concludes that the proposed curtailment adjustment should be denied. We believe that the econometric model used to derive the elasticity coefficients is deficient in several major respects. First of all, no explicit income variable was used in the model.

The Company also argues in brief that the Commission has approved curtailment adjustments in other cases where the curtailment was applied to only selected customer classes, citing Ohio Bell Telephone Company, Case No. 79-1184-TP-AIR (Opinion and Order, December 3, 1980) and Cincinnati Bell Telephone Company, Case No. 80-476-TP-AIR (Entry on Rehearing, July 15, 1981). The Commission has approved curtailment adjustments in telephone cases for particular types of service or pieces of equipment as opposed to a general class of customer. The Applicant argues that this is a distinction without a difference, but we cannot agree. While we recognize that a residential customer receives a somewhat different "type of service" than an industrial or commercial customer, we do not believe the analogy can be made to telephone cases where completely different types of equipment and service are offered, and where the pricing considerations and curtailment effects are entirely different. We must reject this aspect of the Company's argument. We find that the Applicant's proposed curtailment adjustment has not been adequately justified and that Applicant's objection to the Staff's finding on this matter should be overruled.

RATES AND TARIFFS

A number of questions have been raised with regard to rate structure, the design of specific rates, and certain other tariff matters. The analysis of these issues is, to some extent, affected by the fact that the revenue authorized is significantly less than the amount which the proposed rate schedules were designed to generate. Thus it will be necessary to speak in terms of general principles rather than specific rate levels. Consistent with our customary practice, the extent to which the total relief authorized is less than the requested increase should be recognized through a proportionate reduction to the demand and energy charges in all rate schedules, except the G-4 rate, for which the Staff recommended that only the demand charges be adjusted for a lower revenue increase (Staff Ex. 1, p. 54). The tariffs filed pursuant to this Opinion and Order will be carefully reviewed prior to final approval to ensure that the Commission's intent has been carried out. We adopt the Staff's proposals on any matters not specifically addressed in this Order.

Revenue Distribution

The Company performed a class cost of service study to determine the costs incurred in serving each retail customer class and the rate of return earned by C&SOE from each retail class during the test year (Co. Ex. 17, p. 4). Costs were assigned using "the standard industry three-step approach of functionalization, classification and allocation" (Id.). The Company proposed a distribution of the revenue increase among customer classes in a manner which would move toward the gradual equalization of class rates of return, limiting the maximum rate increase to any class to approximately 25%, giving recognition to the rate design principle of gradualism (Id., p. 12).

The Staff reviewed the Company's study, and then ran its own, using the Company's information as a data base (Staff Ex. 1, p. 47). The conclusion reached was that the results of the study are representative of the costs imposed by the various customer classes. However, the Staff expressed some reservations regarding the data used by the Company.

The residential load data used by C&SOE was load research data from Ohio Power Company residential customers for the twelve months ended February 1980 (Tr. VI, p. 36). That data was then weighted for appliance saturation levels and the billing frequency usage patterns for C&SOE (Tr. VI, p. 36). The Company is in the process of conducting a load survey of its own residential customers, and contends that the results of that study are very similar to those of the "hybrid" data (Co. Br. I, pp. 6-7).

should recognize the customer opposition to the customer charge voiced at the public hearing, citing CEI, supra, as precedent.

We believe OCC's desire for consistency with the Ohio Edison and CEI cases to be misplaced. In Ohio Edison, the $1.50 charge was proposed in a stipulation, which the Commission adopted, although recognizing that the "minimal customer charge" did not cover all customer charges as defined by the Staff (Order, at 9). And in CEI, the $1.50 charge was the charge which the company reluctantly proposed, preferring to have no customer charge at all. We note, also, that the Staff's standard methodology in the CEI case produced a recommended $2.62, while that same methodology in this case led to a $3.77 charge. That fact indicates that the customer charge cannot be expected to be consistent from company to company, and that such a concept is meaningless.

We do recognize that customer opposition to this charge is not isolated in CEI's service territory. There was testimony in this proceeding regarding the customer charge from several witnesses, indicating the opposition to such a tariff provision among C&SOE's customers. Taking that into account, and in view of the Staff's calculation of the charge using its uniform method, we believe that a $4.00 charge, rather than the Company's proposed $5.00 charge, should be approved.

RR-1 Rate

In its application, the Company proposed to begin phasing out the difference between its residential rate schedules RR and RR-1. Currently, the RR-1 rate offers a 21% discount from the RR rate, and is available to customers whose monthly consumption during the summer months is less than 700 KWH. This rate schedule was approved at C&SOE's request in Case No. 77-545-EL-AIR (Opinion and Order, March 31, 1978), and was again approved, at the Company's request, in Case No. 78-1438-EL-AIR (Opinion and Order, December 12, 1979). The rate was implemented in May 1978, and currently 200,000 customers, nearly half of the company's residential customers, are on this rate. The Company's proposal is to reduce the RR-1 rate discount to 10% in this case, and to eliminate the discount in the next case.

The Staff agrees with the Company's conclusion that the rate is not cost supported, and recommends that the Company's proposal to reduce the differential in this proceeding be accepted (Staff Ex. 1, p. 50). However, it also recommends that "this differential be maintained in Applicant's next proceeding at which time the issue should be reexamined and reevaluated based on costs and customer impact" (Id.).

Pointing to the Staff's "expressed reservation" about the proposed elimination of the RR-1 rate in the next proceeding, the City, which opposes the Company's proposal in this case, claims that the Staff's recommendations are inconsistent: if there is insufficient information to recommend the elimination of the differential, claims the City, then there is insufficient information to recommend its reduction as well (City Br., p. 12).

OCC also argues for the retention of the current RR and RR-1 differential, and both OCC and the City presented evidence in support of that position. OCC witness Reinbergs offered his opinion that the Company had not sufficiently justified the reduction in the differential, although he had performed no independent analysis (Tr. XVIII, p. 33). City witness Rothey examined the evidence presented by the Company, and concluded that the load data used by the Company produced an erroneous result.

Company witness Jahn testified that his analysis of the load data indicate that load factors of low use customers are not higher than those of high use customers, and that the low use discount is not cost justified (Co. Ex. 17, pp. 23-24). Mr.

Buckeye's benefit, and that therefore capacity costs should not be allocated to the interruptible customers.

C&SOE's Schedule I-P contains several conditions of service, on which Buckeye relies in support of its argument that the Company is not "caused" to construct additional capacity for rendering I-P service. The tariff reads, in part:

> 5. The Company will not be obligated to take any of the following actions to continue service provided under this schedule.
>
> a. Purchase power.
>
> b. Start additional generation in excess of that necessary to provide reserve for firm power customer unless the customer agrees to pay the incremental cost of such generation including the start-up cost.
>
> c. Serve with power from the Company's so-called 'fast-start' peaking units.

The tariff also provides that interruption may occur without notice, and may be of unlimited duration.

The Company concedes that the tariff on its face would support Buckeye's argument, but contends that that is not the way C&SOE operates.

Company witness Vassell testified that at times of capacity deficiencies, the interruptible load is dropped in order to allow time for the Company to arrange for emergency power from other utilities (Tr. II, pp. 157-158). When "help" is obtained the interruptible load is restored; it is not C&SOE's policy to keep the interruptible load off the system for the duration of the capacity deficiency (Id., pp. 158, 162).

In addition, both Mr. Vassell and Mr. Jahn testified that interruptible loads are taken into account in C&SOE's planning process (Tr. III, pp. 20, 43; Tr. XXIII, pp. 27, 35). Consequently, the Company argues, it would be inappropriate to design a rate that assigns no demand costs to the interruptible customer.

Although the recent history of Buckeye interruptions is clear, the future is not. Buckeye was interrupted for 27½ hours in 1979, but had no interruptions in 1980, 1981 and thus far in 1982 (Tr. XXII, pp. 47-48). Because C&SOE is now a part of the AEP system, interruptions on that system would now affect Buckeye. Company witness Helbling testified that there were interruptions on the AEP system in 1980 and 1981, that there are currently fewer interruptions on the system, but that such interruptions will not stop (Tr. XXII, p. 50).

We agree with the view shared by the Staff and Buckeye that no allocation of production plant should be allocated to interruptible customers. While the Company may plan capacity taking the interruptible load into account, it is not obligated under its tariff to do so. If the Company wishes to offer an unrestricted interruptible tariff, it cannot then treat its interruptible customers as if they were firm customers for cost allocation purposes. If a customer chooses to take the risk of interruption as set forth in the Company's tariff, it has a right to the benefit of a rate that reflects that risk.

However, we think Buckeye asks for too much, and find that the Staff's position, which excludes production capacity but includes transmission capacity in its allocators, properly reflects the service received by an interruptible customer. We

Pole Attachment Tariffs

History

Pursuant to Section 6, 47 USC Section 224, the Federal Communications Commission is required to regulate the rates, terms and conditions for pole attachments by cable television systems except where such matters are regulated by a state. Amended House Bill No. 223, effective November 2, 1981, enacted Sections 4905.71 and 4905.72 of the Revised Code, which vest jurisdiction in this Commission to regulate the charges, terms and conditions for the attachment of wires or cables to utility poles. On October 21, 1981, in Case No. 81-1109-AU-ORD, the Commission indicated that it would regulate pole attachments of all utility companies in Ohio, and that it would so certify to the FCC.

By Entry of February 10, 1982 in Case No. 81-1109-AU-ORD, the Commission ordered all regulated utilities to file tariffs showing charges, terms and conditions for pole attachments, and certain specified information in support of those tariff provisions. The Entry also indicated that an evidentiary hearing would be scheduled subsequent to the submission of the filings. However, by Entry of March 31, 1982, the Commission indicated that the proposed tariffs filed pursuant to the Entries in that proceeding would be deemed sufficient if they contained rates, charges, terms and conditions consistent with all attachment agreements or contracts in effect on July 1, 1981.

The tariffs filed by C&SOE pursuant to the March 31 Entry were docketed by the Commission in Case No. 82-654-EL-ATA. By Entry of June 9, 1982, the Commission approved those tariffs for initial implementation, but indicated that the tariffs should be reviewed concurrently with Case No. 81-1058-EL-AIR, and consolidated the two cases for hearing.

On June 16, 1982, C&SOE filed in Case No. 82-654-EL-ATA, a Notice of Dismissal and Withdrawal, arguing that it had not made any application to the Commission to establish pole attachment rates, and that it was not taking the position by its filing of tariffs pursuant to the March 31, 1982 Entry that the rates which were contained therein constituted just and reasonable rates. By Entry of June 21, 1982, the Attorney Examiner refused to dismiss the case, and ordered C&SOE to comply with the June 9 Commission order.

C&SOE also filed on June 16, 1982 an application for rehearing with respect to the June 9 Entry. By Entry of June 30, 1982, the Commission denied the rehearing application.

The Company also argued in its memorandum in opposition to the petition to intervene filed by the Ohio Cable Television Association (Association) on May 28, 1982, that the issues regarding the pole attachment rates, rules and regulations, were not properly at issue in this case. By Entry of June 11, 1982, the Attorney Examiner granted the Association leave to intervene, finding the Company's arguments to be without merit.

The Ohio Telephone Association (OTA) filed a petition to intervene on July 12, 1982. The Attorney Examiner, by Entry of July 23, 1982, denied the petition, but did grant permission to interested parties to file briefs on the legal issues relating to the Commission's regulation of pole attachment tariffs, by Entry of July 23, 1982. Such briefs were filed by OTA and by Toledo Edison Company.

Jurisdictional Question

The Company and Toledo Edison argue that Sections 4905.71 and 4905.72, Revised Code, are unconstitutional. The Company argues that Section 4905.71 effects a taking of property, for cost per pole and on the amount of usable space on the pole, they disagree as to the carrying charge and the space on the pole which is occupied by the pole attachment. The Association stands alone on all components except the space occupied, where it argues with the Staff. The Commission has been presented with various arguments, and more testimony than it thought possible, regarding the usable space on utility poles, how much space is used by a cable attachment, who should be responsible for the 40 inch clearance space between power and communications lines required by the National Electric Safety Code, and which accounts should be included in the determination of the annual carrying charges.

The guidelines specified in Section 4905.72, Revised Code, which have generally been followed by the witnesses presenting testimony on this issue, are very similar to those used by the FCC, which were established following a rulemaking proceeding and several complaint cases (Staff Ex. 3, p. 5; OCTA Ex. 2, p. 3). The FCC uses the same basic formula; it then uses a standard method and applies certain presumptions to determine the values to be assigned to the components of the formula (OCTA Ex. 2, pp. 11, 14, 17, 18). In the view of Association witness McDaniel, "[t]he FCC has...accepted the principle that pole attachment rate setting methodology should be simple and geared to reducing the potential for dispute" (OCTA Ex. 2, p. 15).

Given the time and effort devoted to the assignment of a value to the components of the formula, we have determined to use the FCC formula and its assumptions regarding the components of that formula to determine the pole attachment rate; furthermore, no reduction factor will be applied. Our decision is bolstered by the range of the recommendations of the witnesses providing testimony on this subject. Pursuant to Section 4905.71(B), the Commission must determine "just and reasonable charges" for pole attachments, and we believe that the FCC formula, and the FCC presumptions, will, under most circumstances, produce a just and reasonable result. We hope, and expect, that this decision will simplify the process of determining pole attachment rates, without sacrificing the reasonableness of the result.

The FCC formula yields an annual rate per attachment per pole of $2.34. The formula is specified on Attachment 1 to this Opinion and Order. The Company should file tariffs incorporating this pole attachment rate. Staff witness Groves testified that no adjustment needs to be made to the revenue distribution to recognize the pole attachment classification, and we will follow that course.

Effective Date

Section 4909.42 of the Revised Code provides that if the Commission has not acted upon a rate application filed pursuant to Section 4909.18 of the Revised Code within 275 days of the date of filing, the applicant utility, upon the filing of an undertaking in an amount determined by the Commission, may place the proposed rates into effect, subject to the condition that amounts charged and collected in excess of those finally determined to be reasonable by the Commission shall be refunded. C&SOE has not attempted to place its proposed rates into effect by filing an undertaking, even though the 275 day time period has already expired. The Commission believes that basic principles of fairness dictate that the Company should not be penalized for its forebearance, and that the appropriate course in this case is to establish the effective date of the tariffs filed pursuant to this order as the date they are approved by Commission Entry. The customary notification requirement will be retained; the notice should be mailed to customers upon approval of its form by the Commission.

furnishing electric service to its jurisdictional customers.

6) A rate of return of 12.16% applied to the rate base of $1,029,016,000 will result in income available for fixed charges in the amount of $125,128,000.

7) The allowable annual expenses of the Company for purposes of this proceeding are $505,103,000.

8) The allowable gross annual revenue to which the Company is entitled for purposes of this proceeding is the sum of the amounts stated in Findings 6 and 7, or $630,231,000.

9) The Company's present tariffs should be withdrawn and cancelled and the Company should submit new tariffs consistent in all respects with the discussion and findings set forth above.

CONCLUSIONS OF LAW:

1) The application herein was filed pursuant to, and this Commission has jurisdiction thereof under, the provisions of Sections 4909.17, 4909.18 and 4909.19 of the Revised Code; the Company has complied with the requirements of those statutes.

2) A staff investigation was conducted and a report duly filed and mailed, and public hearings were held herein, the written notice of which complied with the requirements of Section 4909.19 of the Revised Code.

3) The existing rates and charges as set forth in the tariffs governing electric service to customers affected by this application are insufficient to provide the Company with adequate net annual compensation and return on its property used and useful in the rendition of such service.

4) A rate of return of 12.16% is fair and reasonable under the circumstances of this case and is sufficient to provide the Company just compensation and return on its property used and useful in the rendition of electric service to its customers.

5) The Company should be authorized to cancel and withdraw its present tariffs on file with this Commission and to file tariffs consistent in all respects with the discussion and findings set forth above.

ORDER:

It is, therefore,

ORDERED, That the application of Columbus and Southern Ohio Electric Company for authority to increase its rates and charges be granted to the extent provided in this Opinion and Order. It is, further,

ORDERED, That the Company be authorized to cancel and withdraw its present tariffs and to file new tariffs consistent with the discussion and findings set forth above. Upon receipt

Attachment 1

Columbus and Southern Ohio Electric Company
Case No. 81-1058-EL-AIR
Summary Calculation of Pole Attachment Rate

(1)	Cost of Poles (Account 364)	$ 33,375,238
(2)	Number of Poles	239,459
(3)	Gross Cost per Pole [(1) divided by (2)]	$139.38
(4)	Depreciation Reserve @ 34.50%	48.09
(5)	Net Cost per Average Pole [(3) - (4)]	91.29
(6)	Carrying Charge Percentage	34.64%
(7)	Annual Carrying Charge Amount [(9) x (10)]	31.62
(8)	Ratio of Used Space to Usable Space $[\frac{1'}{13.5'}]$	0.0741
(9)	Annual Pole Attachment Rate [(7) x (8)]	$2.34

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
May 15, 1985

IN REPLY REFER TO:

Public Utility Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Attn: Mary R. Brandt, Assistant Attorney General

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifcations comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

> It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state) . . . .

With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
Telephone (202) 632-4890

Sincerely,

Howard M. Wilchins

Howard M. Wilchins
Deputy Chief, Enforcement Division

Enclosure